

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of  
Intent to Use Trademark Application  
Serial No. 75/456,742  
Published in the Official Gazette  
on July 18, 2000

----- X  
MAGASCHONI APPAREL GROUP, INC., :  
:   
Opposer, :   
:   
v. :   
:   
JOHANNES L. KAPPETEIN, :   
:   
:   
Applicant. :   
----- X

Opposition No. 91/120,332

"Express Mail" mailing label No.: EV 591311074 US

Date of Deposit: January 10, 2005

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Trademarks, Trademark Assistance Center, Madison East, Concourse Level Room C55, 600 Dulany Street, Alexandria, VA 22314.

Name: Jane Williams

Signature: Jane Williams

Attn: TTAB  
Commissioner for Trademarks  
Trademark Assistance Center  
Madison East, Concourse Level Rm C55  
600 Dulany Street  
Arlington, VA 22314

**MEMORANDUM OF LAW IN SUPPORT OF MAGASCHONI  
APPAREL GROUP, INC.'S MOTION FOR A DEFAULT  
JUDGMENT AGAINST APPLICANT JOHANNES L. KAPPETEIN**

I. PRELIMINARY STATEMENT

Opposer, Magaschoni Apparel Group, Inc. ("Opposer" or "Magaschoni") submits this Memorandum of Law in support of its Motion for a default judgment against applicant Johannes L. Kappetein ("Applicant" or "Kappetein") in the above referenced Opposition (the "Motion").



## II. STATEMENT OF FACTS

The facts relevant to the Motion are set forth below:

1. On or about August 16, 2004, Opposer filed a First Amended Notice Of Opposition against Applicant, opposing registration of Applicant's mark MAG & Design for diverse articles of wearing apparel and footwear in Class 25 ("Applicant's Mark") on the ground that Opposer would be irreparably harmed by registration of a mark confusingly similar to Opposer's marks and by Applicant's ability to falsely claim exclusive right to use such a mark in commerce. Declaration of Holly Pekowsky ("Pekowsky Dec.") ¶ 2, Ex. 1.

2. On November 1, 2004 the Board issued an order providing Applicant with thirty days, until December 1, 2004, to file its Answer. Pekowsky Dec., ¶ 3, Ex. 2.

3. Over a month has passed since the December 1, 2004 deadline, and Opposer has not yet received an Answer from Applicant. Pekowsky Dec., ¶ 5.

4. In addition, although Opposer served Opposer's First Set of Interrogatories and Request For Production Of Documents To Applicant by regular mail on August 31, 2004, Opposer has not yet received a Response. Pekowsky Dec., ¶ ¶ 4, 5, Ex. 3. Applicant should have responded to the discovery by October 5, 2004. See T.B.M.P. § § 407, 409 (indicating that a party has 35 days to respond to discovery served by regular mail).

## III. LEGAL ARGUMENT

1. Pursuant to 37 C.F.R. § 2.106(a), "If no answer is filed within the time set, the opposition may be decided as in case of default." An Opposer may bring a Motion For Default Judgment if Applicant does not file an Answer within the requisite time.

T.B.M.P. §§ 317.01, 508. Accordingly, since, as indicated above, Applicant has failed to submit an Answer and has also failed to respond to outstanding discovery, it is respectfully submitted that a default judgment be entered against it in the instant Opposition.


IV. CONCLUSION

For the reasons stated above, Opposer's Motion for a default judgment against Applicant should be granted.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP  
Attorneys for Opposer  
90 Park Avenue  
New York, New York 10016  
(212) 336-8000 (telephone)  
(212) 336-8001 (Facsimile)

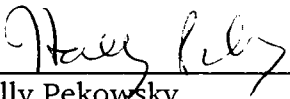
Dated: January 10, 2005  
New York, New York

By:   
Anthony F. Lo Cicero  
Holly Pekowsky

**CERTIFICATE OF SERVICE**

Holly Pekowsky, the undersigned attorney, hereby certifies that she is one of the attorneys for Opposer Magaschoni Apparel Group, Inc. in the captioned action, and that on the date which appears below she served a copy of the annexed MEMORANDUM OF LAW IN SUPPORT OF MAGASCHONI APPAREL GROUP, INC.'S MOTION FOR A DEFAULT JUDGMENT AGAINST APPLICANT JOHANNES L. KAPPETEIN on Applicant Johannes L. Kappetein by causing a copy thereof to be placed in a depository under the care and custody of the United States Postal Service, First Class postage prepaid affixed thereto, addressed to the attorneys for Applicant, as follows:

Joseph A. Calvaruso, Esq.  
Cindy M. Zelson, Esq.  
Morgan & Finnegan, L.L.P.  
3 World Financial Center  
New York, New York 10281-2101

  
\_\_\_\_\_  
Holly Pekowsky

Dated: New York, New York  
January 10, 2005

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under 37 CFR 1.10 on the date indicated above and is  
addressed to the Commissioner for Trademarks, Trademark  
Assistance Center, Madison East, Concourse Level Room  
C55, 600 Dulany Street, Alexandria, VA 22314.  
Name: Jane Williams  
Signature: Jane Williams

Attn: TTAB  
Commissioner for Trademarks  
Trademark Assistance Center  
Madison East, Concourse Level Rm C55  
600 Dulany Street  
Arlington, VA 22314

**NOTICE OF MOTION FOR DEFAULT JUDGMENT**

PLEASE TAKE NOTICE, that upon the annexed Memorandum of Law in Support of Default Judgment Against Applicant Johannes L. Kappetein, Declaration of Holly Pekowsky in Support of Motion for Default Judgment Against Applicant Johannes L. Kappetein, and the prior pleadings and proceedings herein, Opposer Magaschoni Apparel Group, Inc. hereby moves the Trademark Trial and Appeal Board, for an order, pursuant

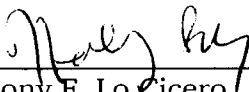
to 37 C.F.R. § 2.106(a) and T.B.M.P. §§ 317.01, 508, granting judgment against Applicant in the above-referenced inter partes proceeding.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP  
Attorneys for Opposer  
90 Park Avenue  
New York, New York 10016  
(212) 336-8000 (telephone)  
(212) 336-8001 (Facsimile)

Dated: January 10, 2005  
New York, New York

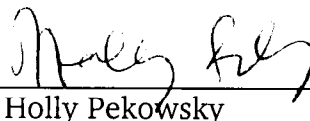
By:

  
\_\_\_\_\_  
Anthony F. Lo Cicero  
Holly Pekowsky

**CERTIFICATE OF SERVICE**

Holly Pekowsky, the undersigned attorney, hereby certifies that she is one of the attorneys for Opposer Magaschoni Apparel Group, Inc. in the captioned action, and that on the date which appears below she served a copy of the annexed NOTICE OF MOTION FOR DEFAULT JUDGMENT on Applicant Johannes L. Kappetein by causing a copy thereof to be placed in a depository under the care and custody of the United States Postal Service, First Class postage prepaid affixed thereto, addressed to the attorneys for Applicant, as follows:

Joseph A. Calvaruso, Esq.  
Cindy M. Zelson, Esq.  
Morgan & Finnegan, L.L.P.  
3 World Financial Center  
New York, New York 10281-2101

  
\_\_\_\_\_  
Holly Pekowsky

Dated: New York , New York  
January 10, 2005

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date indicated above and is addressed to the  
Commissioner for Trademarks, Trademark Assistance  
Center, Madison East, Concourse Level Room C55,  
600 Dulany Street, Alexandria, VA 22314.  
Name: Jane Williams  
Signature: *Jane Williams*

Attn: TTAB  
Commissioner for Trademarks  
Trademark Assistance Center  
Madison East, Concourse Level Rm C55  
600 Dulany Street  
Arlington, VA 22314

**DECLARATION OF HOLLY PEKOWSKY**

Holly Pekowsky declares that:

1. I am an associate at the law firm of Amster, Rothstein & Ebenstein LLP, 90 Park Avenue, New York, New York 10016, trademark counsel for Opposer Magaschoni Apparel Group, Inc. ("Opposer") and I am submitting this Declaration in Support of Opposer's Motion for a Default Judgment against Applicant Johannes L. Kappetein ("Applicant").

2. Attached hereto as Exhibit 1 is a true and correct copy of Opposer's First Amended Notice Of Opposition dated August 16, 2004.

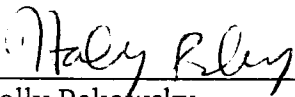
3. Attached hereto as Exhibit 2 is a true and correct copy of the Board's Order of November 1, 2004, advising Applicant of Opposer's First Amended Notice of Opposition and providing Applicant with 40 days from the mailing date of the Order, or until December 1, 2004, to file its Answer.

4. Attached hereto as Exhibit 3 is a true and correct copy of Opposer's First Set of Interrogatories and Request For Production Of Documents To Applicant which Opposer served on Applicant by regular mail on August 31, 2004.

5. Neither Opposer nor our firm has ever received an Answer to the First Amended Notice of Opposition or a response to Opposer's discovery demands.

6. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that all of the foregoing is true and correct.

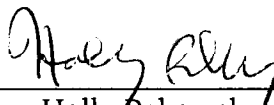
Executed in New York, New York  
this 10<sup>th</sup> day of January, 2005

  
\_\_\_\_\_  
Holly Pekowsky

**CERTIFICATE OF SERVICE**

Holly Pekowsky, the undersigned attorney, hereby certifies that she is one of the attorneys for Opposer Magaschoni Apparel Group, Inc. in the captioned action, and that on the date which appears below she served a copy of the annexed DECLARATION OF HOLLY PEKOWSKY on Applicant Johannes L. Kappetein by causing a copy thereof to be placed in a depository under the care and custody of the United States Postal Service, First Class postage prepaid affixed thereto, addressed to the attorneys for Applicant, as follows:

Joseph A. Calvaruso, Esq.  
Cindy M. Zelson, Esq.  
Morgan & Finnegan, L.L.P.  
3 World Financial Center  
New York, New York 10281-2101

  
\_\_\_\_\_  
Holly Pekowsky

Dated: New York, New York  
January 10, 2005

REC'D

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Opposer,

v.

JOHANNES L. KAPPETEIN,

Applicant.  
----- X

Opposition No. 120,332

"Express Mail" mailing label No.:	EL 857432742 US
Date of Deposit:	August 16, 2004
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514.	
Name:	Jane Williams
Signature:	<i>Jane Williams</i>

**FIRST AMENDED NOTICE OF OPPOSITION**

Box TTAB -NO FEE  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

Commissioner:

In the matter of U.S. Trademark Application Serial No. 75/456,742, filed on March 26, 1998, by Johannes L. Kappetein ("Applicant") and published for opposition in the July 18, 2000 issue of the Official Gazette of the United States Patent and Trademark Office, for the trademark MAG & Design, as applied to:

clothing, namely shirts, pants, jeans, dresses, jackets and tops; footwear in International Class 25 (the "Subject Application").

Magaschoni Apparel Group, Inc. a New York corporation maintaining its principal place of business at 525 Seventh Avenue, New York, New York 10018 ("Opposer"), believes that it will be damaged by the registration of this trademark with respect to the foregoing International Class and hereby opposes the same.

As grounds for the opposition of the trademark, Opposer, by and through its attorneys, alleges as follows:

1. Opposer manufactures and sells wearing apparel, and, since at least as early as February 22, 1994, has used the trademark MAG in conjunction with a line of its wearing apparel.

2. Opposer is the owner of Application Serial No. 75/382,020 seeking to register the mark MAG for wearing apparel, namely, jackets, skirts, pants, camisoles, vests, dresses, tank tops, blazers, tops, shorts, shirts, sweaters and t-shirts.

3. Opposer's use of the MAG mark in conjunction with wearing apparel, namely, jackets, skirts, pants, camisoles, vests, dresses, tank tops, blazers, tops, shorts, shirts, sweaters and t-shirts, has been continuous since at least as early as February 22, 1994 and since that time millions of dollars worth of goods bearing such mark have been sold by Opposer.

4. Opposer sells its clothing bearing the MAG mark throughout the country in major department stores such as Nordstrom's, Macy's and Bloomingdale's, as well as in

boutiques and its own retail stores. Opposer's MAG clothing has been extensively promoted and has been advertised in major fashion magazines such as Vogue, as well as newspapers such as *The New York Times*. Based on the foregoing, Opposer's MAG mark has gained widespread recognition from the trade and purchasing public, and has acquired secondary meaning.

5. Upon information and belief, long after Opposer commenced use of the mark MAG mark in conjunction with wearing apparel and after this mark had acquired secondary meaning, Applicant began using the MAG & Design mark in connection with footwear.

6. Applicant's MAG & Design mark is confusingly similar to Opposer's MAG mark and the Subject Application covers identical goods, e.g., apparel. The Subject Application also covers footwear, which is closely related to apparel.

7. Applicant's use of the MAG & Design mark, in view of Opposer's prior use of MAG, is likely to cause confusion, to cause mistake or to deceive.

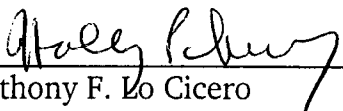
8. Accordingly, it is Opposer's belief that if Applicant is granted registration of the application opposed herein, Opposer will suffer irreparable harm and damage.

WHEREFORE, Opposer respectfully requests that the mark shown in U.S.  
Trademark Application Serial No. 75/456,742 be refused registration in International  
Class 25 and that this Opposition be sustained.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP  
Attorneys for Opposer  
90 Park Avenue  
New York, New York 10016  
(212) 336-8000 (telephone)  
(212) 336-8001 (Facsimile)


Dated: August 16, 2004  
New York, New York

By:   
Anthony F. Lo Cicero  
Holly Pekowsky

**CERTIFICATE OF SERVICE**

Holly Pekowsky, the undersigned attorney, hereby certifies that she is one of the attorneys for Opposer Magaschoni Apparel Group, Inc. in the captioned action, and that on the date which appears below she served a copy of the annexed FIRST AMENDED NOTICE OF OPPOSITION on Applicant Johannes Kappetein by causing a copy thereof to be placed in a depository under the care and custody of the United States Postal Service, First Class postage prepaid affixed thereto, addressed to the attorneys for Applicant, as follows:

Joseph A. Calvaruso, Esq.  
Cindy M. Zelson, Esq.  
Morgan & Finnegan, L.L.P.  
3 World Financial Center  
New York, New York 10281-2101

  
\_\_\_\_\_  
Holly Pekowsky

Dated: New York, New York  
August 16, 2004



UNITED STATES PATENT AND TRADEMARK OFFICE  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: November 1, 2004

Opposition No. 91120332

Magaschoni Apparel Group, Inc.

v.

Johannes L. Kappetein

Albert Zervas, Interlocutory Attorney

Opposer, Magaschoni Apparel Group, Inc., filed a notice of opposition on September 14, 2000, thereby commencing this proceeding.<sup>1</sup> Fed. R. Civ. P. 3 and Trademark Rule 2.101(a). A copy of the pleading has been forwarded to applicant's attorney with the Board's institution order mailed on September 21, 2004.

As permitted by Fed. R. Civ. P. 15(a) and Trademark Rule 2.107, opposer filed an amended notice of opposition on August 16, 2004. In view thereof, a copy of the amended pleading is forwarded herewith to applicant's attorney and applicant is allowed until **thirty days** from the date stamped on this paper in which to file its answer to the amended notice of opposition.

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<sup>1</sup> It is noted that proceedings in this case have been suspended for several years in order to allow the parties to engage in

Additionally, opposer's motion (filed August 31, 2004) to extend the discovery and trial periods is granted as uncontested by applicant. (The Board has not received a response to opposer's motion.) See Trademark Rule 2.127(a). Thus, the discovery and testimony periods are reset as indicated below. IN EACH INSTANCE, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party WITHIN THIRTY DAYS after completion of the taking of testimony. Trademark Rule 2.125.

DISCOVERY TO CLOSE: February 20, 2005

30-day testimony period for party  
in position of plaintiff to close: May 21, 2005

30-day testimony period for party  
in position of defendant to close: July 20, 2005

15-day rebuttal testimony period  
to close: September 3, 2005

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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settlement negotiations. See Board orders of November 9, 2001 and January 13, 2003.



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	:	
JOHANNES L. KAPPETEIN,	:	
	:	
	:	
Applicant.	:	
-----	X	

**OPPOSER'S FIRST SET OF INTERROGATORIES AND  
REQUEST FOR PRODUCTION OF DOCUMENTS TO APPLICANT**

Opposer, Magaschoni Apparel Group, Inc. (hereinafter "Magaschoni"), requests that Applicant, Johannes Kappetein (hereinafter "Kappetein"), respond in accordance with Rules 33 and 34 of the Federal Rules of Civil Procedure and the Rules of Practice of the United States Patent and Trademark Office, to the following Interrogatories and Requests for Production of Documents:

Definitions:

1. The term "document" includes any papers or writings, including drafts, in Kappetein's possession, custody, or control, or of which Kappetein has knowledge, wherever located, however produced, whether original or copy, including but not limited to agreements, financial statements, telex messages, memoranda, minutes, notes,

records, inter-office communications, correspondence, tapes or recordings, telegrams, radiograms, cablegrams, blueprints, drawings, data reports, printed matter, publications, photographs, advertisements (including print, radio, television, internet), brochures, point-of-purchase displays, catalogs, printed forms, coupons, publicity releases and agency call or service reports. Any copy having thereon or attached thereto any alterations, notes, comments or other material not included in the originals or copies referred to in the preceding sentence shall be deemed a separate document within the foregoing definition.

2. As used herein, the term "identify" means:

- a. In the case of a person, to state to the extent known (a) name, (b) last known address, (c) last known employer or business affiliation, (d) occupation and business position held.
- b. In the case of a company, firm, corporation or association, to state to the extent known: (a) name; (b) last known address; and (c) identity of individuals or titles of individuals having knowledge of the matter inquired about.
- c. In the case of documents, to state to the extent known: (a) the author of the documents; (b) its title, or a description of the general nature of its subject matter; (c) the identity of the recipients of original or copies, if any; (d) its date of preparation; (e) its dates and manner of distribution and publication, if any; (f) its present location and custodian; and (g) any privileges claimed, describing the specific basis therefor.

- d. In the case of a litigation, to state to the extent known: (a) the court and/or agency involved; (b) the title and docket number of the case; (c) the date of filing of said suit; (d) the parties and their attorneys; (e) the nature of said proceedings, including the nature of the relief sought and of any alleged violations of law, statute or regulation therein; and (f) the present posture of the case, whether settled, set for trial, final judgment, etc.
3. As used herein, the term the "Magaschoni MAG Mark" means the MAG mark owned by Magaschoni as alleged in the Amended Notice of Opposition.
4. As used herein, the term the "Accused Mark" shall mean: (1) Kappetein's proposed mark, MAG & Design, as shown in U.S. Application Serial No. 75/456,742; and (2) any similar marks used or intended to be used in the United States, whether used separately, alone or in combination with other words or symbols as a trademark, trade name, service mark or otherwise, including, without limitation, MAG, MAGS and MAGS with the design element of U.S. Application Serial No. 75/456,742.
5. The term "Kappetein" refers to Kappetein, his predecessors-in-interest and any related entities.
6. As used herein, the term "person(s)" includes not only natural persons, but also, without limitation, firms, partnerships, associations, corporations and other legal entities, divisions, departments or other units thereof.

NOTE: Any document requested to be produced which Kappetein believes is protected by the attorney-client privilege or other exclusionary rule shall be listed and identified with sufficient clarity and definiteness as to enable Opposer to identify the document accurately in a Request to Produce, and Kappetein shall also provide an appropriate explanation of the exclusionary principle claimed in respect to the document.

### **INTERROGATORIES**

1. Identify and state Kappetein's principal business, including whether he functions as a wholesaler, retailer, broker, manufacturer, importer or mail order house, or in some other business.

2. Identify and describe all products and services manufactured, rendered, distributed, offered, imported, purchased, advertised, sold, or intended to be sold or rendered by Kappetein in the United States, if any, either presently or at any other time, which use, bear, include, feature or display the Accused Mark or are sold in packaging bearing the Accused Mark.

3. State the date of first use, if any, of the Accused Mark in connection with each product and service specified in response to Interrogatory No. 2.

4. With respect to the first use of the Accused Mark in connection with each product and service identified in response to Interrogatory No. 2, state:

- a. The manner in which the Accused Mark is used, e.g., on labels, product packaging, advertising, promotional materials, etc.;
- b. Whether the sale and/or distribution of each item has been continuous from the date(s) identified in response to Interrogatory No. 3; and

c. If the answer to Interrogatory No. 4(b) is in the negative, state the periods of time during which the Accused Mark was not used by Kappetein.

5. State whether Kappetein was aware of Opposer and/or the Magaschoni MAG Mark at the time he filed its application in the United States for the mark MAGS which eventually matured into U.S. Registration No. 2,003,981.

6. State whether Kappetein was aware of Opposer and/or the Magaschoni MAG Mark at the time he filed its application in the United States for the mark MAG & Design which is the subject of U.S. Serial No. 75/456,742.

7. State whether Kappetein was aware of Opposer and/or the Magaschoni MAG Mark at the time he first began using the Accused Mark in the United States.

8. State the manner in which Kappetein first learned of Opposer and/or the Magaschoni MAG Mark.

9. State the dollar and unit volume of sales for each of the products and services identified by Kappetein in response to Interrogatory No. 3, sold or rendered by Kappetein, or any licensee, under the Accused Mark on a yearly basis since first use thereof by Kappetein or any licensee.

10. State whether there have been occasions on which potential or actual customers of Kappetein inquired of Kappetein as to whether products or services bearing or offered in connection with the Accused Mark were licensed by, authorized by, provided by, or manufactured by or for Opposer, and if so, identify said potential or

actual customer(s) and the Kappetein representative(s) with whom each potential or actual customer spoke.

11. Identify all litigations and proceedings in the United States with which Kappetein has ever been involved, whether as plaintiff or defendant, opposer, applicant, petitioner or respondent, which involved or related to legal or factual matters similar to those in this proceeding, including but not limited to, issues of trademark or service mark violation, unfair competition, dilution and Lanham Act violations.

12. With respect to each person who participated in the preparation of the answers to these Interrogatories, identify each person and state his or her relationship and duties with respect to Kappetein.

#### **REQUEST FOR PRODUCTION OF DOCUMENTS**

1. All documents identified in response to the foregoing interrogatories.

2. All documents disclosing the persons to whom Kappetein has sold or provided or intends to sell or provide products or services bearing or using the Accused Mark in the United States since the introduction of such products or services.

3. Specimens of each label, tag, package, brochure, advertisement and other promotional material ever used or intended to be used by Kappetein in connection with the sale of products or provision of services under or in connection with the Accused Mark in the United States.

4. All documents which refer or relate to any complaints related in any way to Kappetein's services or products bearing or using the Accused Mark in the United States.

5. All documents which refer or relate to a likelihood of confusion or instances of actual confusion between the Magaschoni MAG Mark and the Accused Mark in the United States.

6. All documents which refer or relate to the date and manner of first use of the Accused Mark on or in connection with products and services manufactured, distributed, sold, or provided by Kappetein in the United States.

7. All documents which refer to the marketing, distribution, sale, advertising or promotion of Kappetein's products or services bearing or offered in connection with the Accused Mark in the United States.

8. All documents concerning investigations such as trademark, service mark, trade name, or corporate name searches conducted by or at the direction of Kappetein relating to the use and registration of the Accused Mark in the United States.

9. All documents concerning any opinion or advice received by Kappetein, or any person(s) employed by or affiliated with Kappetein, concerning whether or not a trademark conflict might arise from the adoption and use of the Accused Mark in the United States.

10. All documents which show or relate to Kappetein's conception, creation and/or adoption of the Accused Mark.

11. All documents which refer or relate to any investigations, shopping, market study, survey or poll (including pretests conducted by Kappetein, or any person or persons acting for or on behalf of Kappetein) concerning any matter relating to the instant Opposition, including but not limited to Kappetein's use of the Accused Mark, or the issues of likelihood of confusion or secondary meaning.

12. All documents evidencing Kappetein's yearly sales by volume and dollar amount for each product sold by Kappetein, or by any licensee, in connection with the Accused Mark, since the date Kappetein first adopted said mark.

13. All documents evidencing Kappetein's expenditures on advertising, promotion or publicity for each product or service sold or offered by Kappetein, or any licensee, bearing or using the Accused Mark since the date the mark was first used.

14. All license agreements or agreements of a similar nature entered into between Kappetein and any third party, whereby said third party has the right to or is prohibited from manufacturing, advertising, distributing, offering for sale or selling goods under the Accused Mark. For purposes of this request, "third party" includes affiliates and related companies.

15. All documents which refer to or relate to negotiations between Kappetein and any third party with respect to the agreements produced in response to the previous request. For purposes of this request, "third party" includes affiliates and related companies.

16. Any agreements between Kappetein and any other entity which in any way involve or affect Kappetein's ownership or title to the Accused Mark.

17. All documents which refer or relate to any market research, product testing, business plans, advertising campaigns, or the like in connection with products or services sold or rendered under the Accused Mark.

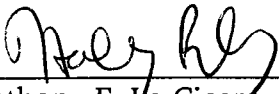
18. All documents referring to or relating to Opposer and/or the Magaschoni MAG Mark.

19. All documents concerning Kappetein's failure to file a Section 8 and/or 15 Declaration in connection with U.S. Registration No. 2,003,981.

20. All documents concerning Kappetein's decision to allow U.S. Registration No. 2,003,981 to become cancelled.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP  
Attorneys for Opposer  
90 Park Avenue  
New York, New York 10016  
(212) 336-8000 (Telephone)  
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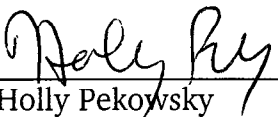
By:   
\_\_\_\_\_  
Anthony F. Cicero  
Holly Pekowsky

Dated: New York, New York  
August 31, 2004

**CERTIFICATE OF SERVICE**

Holly Pekowsky, the undersigned attorney, hereby certifies that she is one of the attorneys for Opposer Magaschoni Apparel Group, Inc. in the captioned action, and that on the date which appears below she served a copy of the annexed Opposer's First Set Of Interrogatories And Request For Production of Documents To Applicant on Applicant Johannes Kappetein by causing a copy thereof to be placed in a depository under the care and custody of the United States Postal Service, First Class postage prepaid affixed thereto, addressed to the attorneys for Applicant, as follows:

Joseph A. Calvaruso, Esq.  
Cindy M. Zelson, Esq.  
Morgan & Finnegan, L.L.P.  
3 World Financial Center  
New York, New York 10281-2101

  
\_\_\_\_\_  
Holly Pekowsky

Dated: New York, New York  
August 31, 2004